IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2251 OF 2007

M/s.Amit Petroleum Pvt. Ltd. ....Petitioner

V/s.

State of Maharashtra & Ors. ....Respondents

Mr.R.M. Agarwal i/b Mr.S.K. Chaurasia for the Petitioner.

Mr.V.P. Malwankar, AGP for the Respondents.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 29TH JUNE, 2007.

P.C. :

1. This Petition takes exception to two orders bearing the same date i.e. 31.8.2006, passed by the Revisional Authority in the Revision Application filed by the Petitioner abovenamed. By the said orders, both the Revisions came to be rejected.

2. The Petitioner is a Company incorporated under the Companies Act. The Petitioner abovenamed is engaged in the manufacture of industrial items by use of Naphta and Solvent at its factory in M.I.D.C. at Lote Parshuram, District Chiplun. The said factory

was established in the year 1997 or thereabouts. The Petitioner was granted a licence for Naphta bearing No.SB/FDL/NSRS/3/2000 on 20.12.2000 and a licence for Solvent bearing No.SB/FDL/NSRS/4/2000 on 20.12.2000. On the expiry of the said licences some time in the year 2003, the Petitioner applied for renewal of both the licences i.e. for Naphta and Solvent vide its letters dated 23.12.2003, 7.7.2004, 14.9.2004 and lastly 1.3.2005. The Petitioner was informed by the Authorities that the renewal of the Petitioner's licences was under consideration and under process. According to the petitioner, it complied with all the formalities as required by law.

3. The Petitioner was issued show cause notices dated 6.4.2005 in respect of both the licences alleging irregularities. The alleged irregularities in respect of both the licences were that end-use certificates which ought to be submitted monthly and three monthly, were not submitted. In so far as Naphta was concerned, the said certificates were not submitted for the period May, 2002, November, 20002 to April, 2003, January, 2004 to June, 2004 and November, 2004 to March, 2005.

. The second allegation in the said show cause

notices was that the Petitioner had dealt with Naphta to the extent of 983.093 M.T. which was in excess of the quantity stipulated in the Naphta licence.

4. In so far as the show cause notices relating to the Solvent was concerned, the end-use certificates which were not submitted by the Petitioner was for the periods May, 2002, November, 2002 to April, 2003,d January, 2004 to June, 2004 and November, 2004 to March, 2005 and excess the quantity of the Solvent dealt with the Petitioner was to the extent of 866.339 M.T. over and above the quantity mentioned in the licence. The Petitioner replied to the show cause notices vide its letter dated 6.5.2005. In the said reply, the Petitioner admitted dealing in excess quantity but however sought to justify the same by stating that since it had applied for increase in capacity at the time of renewal of the licence in the year 2003, the excess Naphta and Solvent were dealt with on the assumption that since the licences were not renewed by the Authorities within the time stipulated, the licences were deemed to have been renewed with the increased capacity and therefore, it had dealt with the excess quantity mentioned in the show cause notices.

. In so far as the end-use certificates was concerned, the Petitioner has made a statement in the said reply that end-use certificates have already been furnished.

5. The Petitioner in respect of the said show cause notices was called for hearing on 17.5.2005 on which day none appeared for the Petitioner. The Upper District Collector, District Ratnagiri came to a conclusion that non-furnishing of the said end-use certificates as well as dealing with in excess quantify of Naphta and Solvent was in violation of the Maharashtra Naphta Refine and Slop (Acquisition, Sale, Storage and Prevention of use in automobile) Licensing Order, 2000 and especially clauses 11 and 12 of the said Order. The said Authority therefore, by its order dated 22.12.2005 cancelled both the Naphta as well as Solvent licences issued to the Petitioner.

6. Being aggrieved by the said order of the Upper District Collector dated 22.12.2005, cancelling both the licences of the Petitioner relating to Naphta as well as Solvent, the Petitioner filed two Revisions before the State Government. In the said Revision, the Petitioner was asked to remain present for a hearing on 30.5.2006 vide letter dated 3.5.2006. The

Petitioner in support of the said Revision filed certain documents on 30.5.2006 by a letter of the said date. In the list mentioned in the said letter, the end-use certificates do not find a mention. The Revisional Authority i.e. the Hon'ble Minister for Food and Civil Supply, State of Maharashtra, by his order dated 31.8.2006 dismissed both the Revisions and confirmed the orders passed by the Upper District Collector. The Revisional Authority came to a conclusion that end-use certificates were not filed by the Petitioner for both the items i.e. Naphta and Solvent that it had exceeded the quantity mentioned for both Naphta and Solvent to the extent of 983.093 M.T. of Naphta and 866.339 M.T. of Solvent. The Revisional Authority on the basis of the material produced, also came to a conclusion that the Petitioner had sold the said products to non-existing companies/parties.

7. We have heard the learned counsel for the parties. It is contended on behalf of the Petitioner that the finding of the Revisional Authority that end-use certificates were not submitted by the Petitioner was erroneous as the said statements have already submitted to the Authorities. The learned counsel for the Petitioner for the said purposes

relied upon the letter dated 30.5.2006. The learned counsel for the Petitioner further submitted that the finding that the said products were sold to fictitious companies, was not based on any allegation made in the show cause notices and therefore, the Petitioner did not have an opportunity to deal with the said allegation. The learned counsel for the Petitioner lastly submitted that the excess quantity has been dealt with on the assumption that the Petitioner had applied for renewal of the licences with increased capacity of both the products. However, since the Authorities had not renewed the licence within the time stipulated, the Petitioner had proceeded on the assumption that it had deemed permission in its favour and therefore, dealt with the increased quantity.

8. In so far as the Petitioner's contention about the said end-use certificates being furnished to the Authorities, we do not find any material in support of the said submission of the Petitioner. The Petition is conspicuously silent of any averment in that regard. Reliance of the learned counsel for the Petitioner on a letter dated 30.5.2006 to contend that end-use certificates were furnished is also mis-founded. A reading of the said letter ex-facie makes it clear that the end-use certificates were not

part of the documents submitted with the said letter. In so far as the reply of the Petitioner dated 6.5.2005 to the show cause notices is concerned, the said reply contains a vague statement that the end-use certificates have already been furnished to the Authorities. The Petitioner at the time of hearing of the Petition, placed a compilation of documents before us. In the said compilation the end-use certificates have been annexed. The said end-use certificates are for March, 2005, November, 2004, October and November, 2002, April to June, 2002 and therefore, do not relate to the period for which the show cause notices were issued. At the highest even assuming that the said end-use certificates were filed, it could only be said that there was a partial compliance.

9. In so far as the allegation of dealing in excess quantity of both Naphta and Solvent over and above the quantity mentioned in the licences is concerned, it is significant to note that the Petitioner has accepted the said allegation in its reply to the show cause notices. However, the Petitioner is seeking to justify the same by contending that it dealt in excess quota on the assumption that since it had applied for increase in quota at the time of renewal of its licences.

However, in view of the fact that the Authorities had not communicated to the Petitioner about the renewal of its licences within the time stipulated, the Petitioner had proceeded on a assumption that the said increase in quota was deemed to have been granted to it. It is pertinent to note that the Petitioner is dealing in products like Naphta and Solvent which are regulated under the said Licensing Order and unless the quota was increased in favour of the Petitioner, the Petitioner had no business to deal in the quantity over and above the one mentioned in its licences. The said excess quantity is to the tune of 983.093 M.T. in respect of Naphta and 866.339 M.T. in respect of the Solvent. This can by no stretch of imagination be condoned by the Authorities. We are, therefore, of the view that the Authorities were right in recording a finding against the Petitioner and holding it as a ground for cancellation of the Petitioner's licences.

. Reliance of the learned counsel for the Petitioner on the judgment reported in *AIR 1991 SC 515, Murarilal Jhunjhunwala vs. State of Bihar and others* is misplaced. The said case concerns an application for renewal of licence being filed and pending such application, prosecution being launched against the Applicant. In the said facts, the Apex

Court has held that the Applicant could not have been prosecuted as his application for licence was pending. Such are not the facts in the instant case, as the Petitioner in the instant case on the assumption of deemed permission has dealt with the excess quantity far above the quantity mentioned in its licence.

10. As regards the Petitioner's submission that the allegation that the Petitioner had sold the said items to the companies which are fictitious, does not find a place in the show cause notices and therefore, the Authorities had exceeded their jurisdiction in recording a finding to that effect. In our view, the said submission made on behalf of the Petitioner is misconceived. The allegation against the Petitioner was exceeding the quota of both Naphta and Solvent to the extent mentioned in the show cause notices though the said allegation that the Petitioner had sold it to the fictitious companies, was not specifically mentioned in the show cause notices, however that the Petitioner had dealt with the said items in excess of the quantity mentioned in its licences, has been specifically mentioned. The said finding of the Authorities therefore flows out of the allegation made against the Petitioner in respect of dealing in quantity in excess of the quantity mentioned in its

licences.

. To deal in commodities like Naphta and Solvent in excess of the quantity mentioned in the licence, in our view amounts to a gross breach and violation of the licence conditions.

. Judicial notice can also be taken of the fact that the adulteration of petrol and diesel is done by mixing Naphta. We therefore have to consider the finding of the authorities in the said context also. In the said circumstances, we are of the view that the Authorities have not exceeded their jurisdiction in recording the said finding.

. We have perused the impugned orders passed by the Upper District Collector, Ratnagiri as well as the orders passed by the Revisional Authority, we do not find any illegality or infirmity in the said orders for this Court to interfere in its extra-ordinary jurisdiction under Article 226 of the Constitution of India, the Petition is therefore, summarily dismissed.

11. It is submitted on behalf of the Petitioner that some stock is lying in the Petitioner’s factory and in view of the cancellation of the licences, the

Petitioner is not in a position to deal with the same. If that be so, the Authorities would be well advised to dispose of the said stock in accordance with law within a period of four weeks.

Petition dismissed.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)